



## Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact [support@jstor.org](mailto:support@jstor.org).

cepted as valid in Illinois. To do so would be to engraft a new rule upon the marital policy of that state. It would obligate immigrants to Illinois from countries where such consent is required to be obtained, to apply for and secure, before they marry, the consent of the governments whose jurisdiction they have left. Such a law needs only to be stated to be rejected as unsound.

And while it is clear that a foreign judgment of nullity cannot be wholly accepted in America as valid—that is, with all its consequences, including those of illegitimation and *ab initio* avoidance of marriage, its partial acceptance—for example, its acceptance to the same extent that a foreign decree of divorce is taken, *i. e.*, as establishing a new *status* for the parties to it, is not free from difficulties arising out of its effect as a decree of nullity. As Mr. Bishop says (2 M. & D., sect. 690): “The general doctrine is, that the parties are then (after the decree of nullity) regarded as if no marriage had taken place; they are single persons if before they were single,” and he quotes *Anstey v. Manners*, Gow 10, that “If the wife becomes a single woman by operation of law, it is the same as if she had always remained single.” The meaning of this is, that the *status* of the

parties was never changed and continues to exist notwithstanding their attempted but void marriage. In other words, the effect of a decree of nullity of marriage appears to be not to establish any new *status*, but simply to declare that an old *status* continues to exist unaltered and unaffected by an attempted but absolutely null and void marriage. How can a decree of nullity of marriage be recognised as creating a new *status* where its effect is not to create any new *status*, but only to declare the existence and continuance of an old one? Counsel and court say the marriage in Illinois was a valid marriage. How then can they accept and enforce a foreign decree of nullity which says that the Illinois marriage was and is unlawful, invalid, not binding and *ab initio* null and void?

The reasoning and conclusion of the principal case may or may not be sound law. Further information, discussion and adjudication must settle this. But the decision certainly appears very questionable. One cannot but feel that it would rest upon foundations much more solid if grounded upon the American wife's agreement to renounce all her rights to her husband's American property.

ADELBERT HAMILTON.

Chicago.

---

### *Supreme Court of Mississippi.*

WILLIAM OLIVER v. JOHN C. LOVE.

The assignee of a covenant for title to land situated in Louisiana may maintain in Mississippi, a bill in equity to obtain reimbursement for expenditures made by him in resisting a suit and in extinguishing a paramount title asserted and maintained as to the land.

*Semble*, such assignee might also have maintained a suit at law for money paid out and expended for the use of the covenantor.

Whether an action for damages for an injury to land situated out of the state may not be maintained in the courts of Mississippi, *quære*.

A court of equity is not like a court of law fettered by the rule as to local and transitory actions.

APPEAL from Chancery Court of Copiah county.

The appellee exhibited his bill in said court to obtain reimbursement for expenditures made by him in resisting a suit and in extinguishing a paramount title asserted and maintained as to land situated in Louisiana, which the appellant had sold and conveyed with a warranty of title to one Smith, who assigned to the appellee. The bill was demurred to, because the land is in Louisiana, and the right of the complainant sprung not from contract but from privity of estate by reason of the covenant of warranty of title which ran with the land, and therefore the courts of this state can not give relief, because, it is said, and conceded on both sides, that an action founded in privity of estate is by the common law local and not transitory, and is not maintainable out of the jurisdiction in which it arose. The court below overruled the demurrer, whereupon respondent appealed.

The opinion of the court was delivered by

CAMPBELL, J.—It is the settled doctrine in England and America at common law that no *local* action can be maintained out of the jurisdiction in which it arose, and although this is, in many instances, to deprive a party of all remedy, the rule is said to be peremptory and inflexible. Accordingly, it has been repeatedly held, that trespass for injuries to land in one country or state can not be maintained in another, and that no recovery can be had on a covenant running with land by an assignee of the covenantee, except in the state where the land lies, even when the covenantor resides elsewhere: *Doulson v. Matthews*, 4 Term 503; *Livingston v. Jefferson*, 1 Brock. 203; *Watts v. Kinney*, 23 Wend. 484; s. c. 6 Hill 82; *Eachus v. Illinois & Mich. Railroad Co.*, 17 Ill. 534; *Worster v. The Winneb. Lake Co.*, 5 Foster 525; *Lienow v. Ellis*, 6 Mass. 331; *Clark v. Scudder*, 6 Gray 122; *University of Vermont v. Joslyn*, 21 Vermont 52; *White v. Sanborn*, 6 N. H. 220.

If this case is governed by the common law, the suit is not maintainable. All of the cases cited above rest upon the common law, and the distinction it made between local and transitory actions.

Originally, all actions were local, and great regard was had to place, so that every material allegation of a pleading had to be accompanied by the averment of a place, in order that a jury

might be summoned from the proper neighborhood, if issue should be taken on any of such allegations. The courts, in order to relieve against the difficulties which arose from the necessity of the proper venue in every action, took a distinction between matters which were local and those which were transitory, and invented a fiction whereby actions for causes of a transitory character, wherever they arose, might be maintained without regard to locality, "while no cognisance could be taken of local actions save where a jury of the county could be summoned to try them." A result was that for an injury to the person or chattels, and for a breach of any contract, even if it related to land a remedy might be had in the courts of another state or country than that in which the injury was done or in which the land lay. In other words, if the action was transitory and not local, it was maintainable anywhere.

The courts in England soon freed themselves from the fetters of locality, as to all causes of action of such nature that they might arise anywhere, and by means of falsehood, politely called fiction, and stated under a *videlicet*, which was an apology for not telling the truth, maintained actions on such causes of action as arose out of the territorial jurisdiction of the courts of England. But such causes of action as could from their nature arise only in one place, and therefore were considered as local, and to be redressed only by local actions, did not arise with the frequency of the other class, and did not press upon the courts sufficiently to induce them to include them in the fiction invented to sustain the other class of actions, and as to them the courts continued bound by the idea of the place at which they arose. Therefore it is that courts governed by the common law as to actions and process have felt bound to deny a remedy for causes of action arising abroad which could be redressed only by local action. Tried even by this rule an action might be maintained in the circuit court of Copiah county, by the appellee against the appellant, for by our law it is not local but transitory. The only local actions under our statute are ejectment and actions of trespass for injuries to land. They must be brought in the county in which the land lies. All other actions must be brought with reference to the person of the defendant.

The common-law distinction of local and transitory actions does not exist here. The statute alone governs, and we can not disregard it, and, because under the common law no remedy could be

had by the assignee of a covenantee in a covenant of warranty of title of land lying in another state, deny a remedy in the courts of this state, which does not treat such an action as a local one. The courts which have held such an action not maintainable have done so under the stress of the common law, which they felt so bound them as to constrain them to do what reason revolted at. Happily, we are freed from the constraint of this absurd rule, and look to our statutes to see what actions may be maintained by our courts. The appellee might maintain an action for money paid to the use of the appellant: *Kirkpatrick v. Miller*, 50 Miss. 521; *Dyer v. Britton*, 53 Id. 270.

In the last case cited Britton was an assignee of the covenantee, and was held to be entitled to maintain *assumpsit for money paid*. Certainly, that is not a local action, under the common law.

But apart from all this, which is conclusive of the case, this is not an action of law, but a suit in equity, which never was hampered by distinctions of local and transitory causes of action, as were courts of law. All of our courts must exercise their jurisdiction in proper places, but except as prescribed by statutes, the place which gave birth to a cause of action is of no influence in determining the jurisdiction of a court.

There is no objection to maintaining a suit in the courts of one state, because it arose out of a controversy about land in another state, for it is admitted that a remedy will be afforded by the courts of one state on a contract about land in another. And it is settled that an action by the covenantee for a breach of warranty of title is not local, but is transitory, because it is said to arise from contract, and, being transitory, it would follow that it might be maintained anywhere unaffected by the locality of the land.

In England the actions made transitory by the statute (32 Henry VIII. c. 34), were held to be freed from the feature of *locality* before affecting them. In Massachusetts a statute was held to have wrought a change in the character of an action otherwise a local one, and to authorize it to be brought elsewhere; *Summer v. Finegan*, 15 Mass. 280; *Pitman v. Flint*, 10 Pick. 504. This is the doctrine in Ohio: *Genin v. Grier*, 10 Ohio 209. See also, *Miller v. Thurmond*, 20 Mo. 477; *Graves v. McKeon*, 2 Denio 639.

We are by no means prepared to say that an action for damages for an injury to land situated out of this state may not be main-

tained in the courts of this state. This question is not now presented for decision, and is adverted to, lest we may be considered as committed to the doctrine that, because such an action arising in this state must be instituted in the county in which the land lies, therefore where the land lies out of the state, and the statute cannot be complied with, no action can be maintained. It may be that the statute regulating the venue of actions relates only to such local actions as arise in this state, and that all causes of action arising abroad, not involving recovery of possession of land, are maintainable by the court of that county where the defendant may be found.

We leave this an open question.

Decree affirmed.

The statement of facts in the principal case does not disclose whether it is one maintainable in a court of equity by reason of its jurisdiction to decree specific performance, reformation or rescission or an injunction, with powers extended to decree damages by legislation similar to "Lord Cairns's Act," 21 & 22 Vict., c. 27, or whether the jurisdiction was acquired by state statutes enlarging the jurisdiction of courts of equity. Without such legislation it might not be maintained, irrespective of any question of the differences between local and transitory actions, as there would be an adequate remedy at law for the damages sued for, and it is probable a demurrer for that cause would have been sustained: *Rawle Cov.* (4th ed.) 648; 2 *Danl. Ch. Pr.* (5th ed.) 1081.

The statutory modification of the common-law distinctions between local and transitory actions referred to in the principal case will probably be found in most if not all the states having codes of practice. These generally direct when, how and where actions may be brought, with almost sole reference to the residence or place where the defendant is found; and in directing what actions shall be brought in the county where the land lay they confine the restriction, as in the Mississippi statute, to ejectment

and trespasses on the land. But now and then we come across some old common-law draughtsman whose statute requires "suits of a local nature" to be brought within defined territorial limits: *U. S. Rev. Stat.*, sects. 740, 741, 742, 744. The denial of all remedy in such cases, that sometimes results where the defendant cannot be found in the particular district to which the plaintiff is confined, is obviated by these federal statutes, if he resides in the same *state*, by sending the writ to that district in which he does reside. Otherwise these statutes would seem to impose all the old-fashioned "fetters of locality," as Mr. Justice CAMPBELL calls them, unless we are to interpret the phrase "suits of a local nature" according to the law of the state in which the suit is brought, and not according to the common law. It might be interesting to note whether the principal case could have received the same intelligent judgment if it had been brought in a federal court or removed thereto—aside from the manifest difficulty of any jurisdiction of a federal court of equity over it—which had its jurisdiction so restricted; and if not, would we not have the common-law predicament, under some circumstances, of leaving the plaintiff practically without remedy? These questions are more easily

asked than answered by any adjudications to be found affording a solution. And the opinion suggests with silent force the perplexities that lie within these words, "suits of a local nature," remarkably dormant though they be, for the reason, perhaps, that except in ejectment where we get along without any defendant but the actual occupier, this class of suits is rare in all courts.

Again, whether these sections of the revised statutes are at all affected by the Act of March 3d 1875, 18 Stat. 470, as is intimated by the compiler of the supplement—Rev. Stat., 1 Supl. 173—may be questionable. But if they are modified or repealed by that act the perplexities above mentioned are increased, for the want of uniformity in the legislation of Congress on the subject and its defective character, if they be repealed, becomes apparent on comparison of the repealed sections with the special acts establishing new districts or prescribing additional places for holding the courts. In some of them this phraseology in reference to "suits of a local nature" is kept up without the full provisions on the subject contained in the old Act of 1858 carried into the revised statutes at the sections above cited, and the repeal of which is intimated: Rev. Stat., 1 Supl. 508, ch. 17, sect. 4; Id. 509, ch. 18, sect. 4; Id. 536, ch. 120, sect. 2; Id. 548, ch. 203, sect. 5; Id. 384, ch. 359, sect. 1, par. 17; Id. 415, ch. 97; Id. 262, ch. 41; Id. 407, ch. 43; Id. 376, ch. 326, sect. 2. Some of these statutes provide for suits "*not* of a local nature," but make no provision for those that are of "a local nature," while others are entirely silent on the subject; that in reference to Michigan, however, says, "The said circuit and district courts may regulate by general rule the venue of *transitory* actions, either in law or equity, and may change the same for cause," which is an anomalous arrangement. If, therefore, the Act of 1858, Rev. Stat., sects.

740, 744, be repealed by the Act of 1875, there is no longer any provision for suits of "a local nature," such as is found in those sections. It will be observed, also, that some of these statutes pertain to suits in their relation to separate districts in the same state or to divisions of the same district, while none of them in terms provide for the distinctions of the subject arising out of the location of the land in another state, as in the principal case, though it would seem an implication from the act of 1858 that "suits of a local nature" could not be brought out of the state where the land lay, although the defendant may be found in another district, and in transitory actions suable there. If these statutes may be confined in their legislative command so that they are to be treated as mere regulations of procedure—and not *jurisdictional* in a technical sense—to govern the *inter-district* practice in the same state, the difference between local and transitory actions is left by congressional legislation in its *inter-state* application, to the influence of the common law, unless indeed the broad language of all the judiciary acts giving jurisdiction in "ali civil suits," and providing that "no civil suit shall be brought against an inhabitant of the United States, by any original process in any other district than that of which he is an inhabitant, or in which he is found at the time of serving the writ," may be held to have abolished these distinctions altogether: U. S. Rev. Stat., sects. 629, 739; Rev. Stat., 1 Supl. 173, ch. 137. Except, of course, in that very limited class of cases where the *international* obstacle to enforcing a judgment for the delivery of possession of lands in a foreign jurisdiction exists. And here it may be worthy of remark that sometimes there is a manifest inattention to this feature of the subject. Deferentially, it may be suggested that those cases and authors that find the governing principle which refuses juris-

diction over actions pertaining to land in a foreign state grounded in the common-law distinctions as to *venue* between local and transitory actions in the kingdom of England confuse our ideas and mislead us. It may be a bold thing to say that this is an absolute error, and that the two principles are as distinct as two things can be, for if an error at all it is venerable with age and sanctioned by the highest authority; but hoary as it is, its absolute correctness has been and may again be challenged. The reason why a court in England cannot entertain jurisdiction of an action of ejectment for lands in France is not because the jury should be summoned from the vicinage and have a knowledge of the witnesses, but because there is no power to enforce the judgment and no sort of governmental authority over the land. The owner being within the kingdom of England, does not, under the principles of international law, confer the jurisdiction to do that thing. So, where the object of the suit is to effect a transmission of the ownership or title, France will not, and international law does not require her to recognise any operation of the laws of England to transmit the title; nor need she, if the English courts happen to have the owner within their grasp and compel him by a notarial act or deed strictly according to the law of France to convey the title, recognise a transfer so coerced. She may or may not at her pleasure give effect to such transfers. Obviously actions like that of the principal case, or *quare clausum fregit*, do not come within the operation of this principle, and there is nothing in it to forbid the English courts from awarding damages and satisfying them out of any property in England. The courts may decline the jurisdiction for any unsatisfactory reason like that of the *venue* in local actions, and it seems they do where the common law prevails, but that it is not an inherent want of *jurisdiction* is shown by the fact that if the law of the

foreign state affords no remedy the common-law courts will not decline one. They must decline or render abortive judgments where the case falls within the *international* principle above mentioned, and they have no choice about it, but the operation of that principle is exceedingly limited, and does not depend on any of the vague if not inconsequential differences between local and transitory actions as laid down in the books, but on a want of authority to enforce the judgment that is demanded in the particular case. Even in a court of equity acting *in personam* to compel the transfer of the title according to the law of the place where the land is situated, the judgment would be abortive if the foreign law should refuse to recognise a title so obtained, and hence the court will not entertain jurisdiction for that purpose alone, and only acts on the title incidentally, when it has jurisdiction for some other well-recognised purpose which will be sustained, and to this extent a court of equity is controlled by the law of local and transitory actions: *Massie v. Watts*, 6 Cr. 148; *Muller v. Dows*, 94 U. S. 444.

Returning for the moment to the federal statutes, it is apparent that they present a phase of the subject that it would be interesting to consider more at length than the space allotted to a note permits. In suits at law there seems to be some escape from the difficulties they present when read in the light of the erudition of the principal case by defining the words "suits of a local nature," according to the state laws as in other matters of practice, and not according to the common law. For example, there is no reason in this day and generation why an action of trespass, *quare clausum fregit*, which is local at common law, should not be brought in any state where the defendant is found, and under a common count for money had and received in the same way the principal case indicates the action there might have been sustained

under a count for money paid out and expended. These reforms belong to the legislatures and not the courts. But Congress might, through its own committees or commissions capable of instituting the reforms, bring the laws up to the standard of the best modern improvements, and establish a code that would regulate uniformly the practice of its courts in the exercise of the judicial power they possess. At least it could define what it means by "suits of a local nature," and not leave the courts to grope in the dark places Mr. Justice CAMPBELL throws light upon. Specific definitions in statutes like these are better than generalizations, for reasons that are plain in that light, and more particularly since they are made for a jurisprudence that has no common law of its own, and constantly refers us to differential systems of state laws that often furnish no guide where the acts of Congress' are silent. The probability is, that if the suit Mr. Justice CAMPBELL was deciding had been brought in the federal court of equity it would have been dismissed; and if brought at law, unaided by the Mississippi statute, it would have been dismissed, and yet, the acts of Congress forbid its being brought in any other state than where the defendant resides or is found. And if the laws of Louisiana treat it as a transitory action, as they probably do, although "a suit of a local nature," there could be no remedy there as long as the defendant should remain out of that state.

This note will be closed with a mere reference to authorities that may be useful to the reader in his investigations, as the space assigned prevents any more extended examination of them: *McKenna v. Fisk*, 1 How. 241; *Mitchell v. Harmony*, 13 Id. 115; s. c. 1 Blatch. 549; *Watts v. Waddle*, 6 Peters 389; s. c. 1 McL. 200; *Boyce v.*

*Grundy*, 9 Peters 275; *Northern, &c., Railroad v. Michigan, &c., Railroad*, 15 How. 233; s. c. 5 McL. 444; *Miss. & Mo. Railroad v. Ward*, 2 Black 485; *McMicken v. Webb*, 11 Peters 25; *Cherokee Nation v. Georgia*, 5 Id. 179; *Brine v. Ins. Co.*, 96 U. S. 627, 635; *Casey v. Adams*, 102 Id. 66; *Dennick v. Railroad Co.*, 103 Id. 11; *Rundle v. Delaware, &c., Canal Co.*, 1 Wall. Jr. 275, 282, and note; s. c. 14 How. 80; *Gorman v. Marsteller*, 2 Cr. C. C. 311; *Carrington v. Brents*, 1 McL. 167; *Westerwelt v. Lewis*, 2 Id. 511; *Tardy v. Morgan*, 3 Id. 358; *Pirquet v. Swan*, 5 Mason 35, 42; *Briggs v. French*, 1 Sumner 504; *Lyman v. Lyman*, 2 Paine 11, 46; *Vore v. Fowler*, 2 Bond 294; *Cage v. Jeffries*, 1 Hempst. 409; *United States v. Ames*, 1 Wood. & Min. 76; *Stillman v. White Rock, &c., Co.*, 3 Id. 538; *Foot v. Edwards*, 3 Blatch. 310; *Kanawha Coal Co. v. Kanawha Coal Co.*, 7 Id. 391; *Wheeler v. McCormick*, 8 Id. 267; *Locomotive, &c., Co. v. Erie Railroad*, 10 Id. 292; *Cunningham v. Ralls*, 1 Fed. Rep. 453; *Rutz v. St. Louis*, 7 Id. 438; 1 Spence Eq. 684-699; 1 Tidd's Pr. 363, 428, 601, 610; 1 Washb. Real Prop. 522; Gould's Pl. Ch. 3; Cooley on Torts 470; Whart. Confl. Laws 290, 711; Bouv. Dic., Abb. Dic. tit. *Venue, Local Actions, Transitory Action*: 1 Wms. Saund. 247 and note; 1 Chit. Pl. 298; 1 Bac. Abr. 78; 10 Id. 364; 2 Danl. Ch. Pr. 1112; 7 Jac. Fish. Dig. 9983; Rawle Cov. 234, 532, 533; Waterman Spec. Perf. 22, 48; Alb. Law Jour. 47, 119, 219; 7 Cent. Law Jour. 1, 2; *The Mozham*, 1 P. D. 45, 107; *Whittaker v. Forbes*, 1 C. P. D. 51; *McGregor v. Topham*, 3 Hare 132; *Buenos Ayres, &c., Railroad v. Northern, &c., Railroad*, L. R. 2 Q. B. Div. 210; s. c. 16 Am. Law Reg. 359 and note. The state cases are far too numerous for citation.

H.